

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

ANDRIETTE ROWELL,

Plaintiff,

v.

**CITY OF AUBURN, ALABAMA,
JUDGE JOE BAILEY,**

Defendants.

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NO.: 3:07-CV-475-WHA

PLAINTIFF'S CONDITIONAL MOTION FOR VOLUNTARY DISMISSAL

Comes now the Plaintiff, Andriette Rowell, by and through her attorney and moves the Court, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, to dismiss this action voluntarily, with costs taxed to the Plaintiff, but only upon the condition that the dismissal be without prejudice and the Court enter its order by October 8, 2007. In the event the Court is unwilling to dismiss the case without prejudice, by October 8, 2007, Plaintiff does not desire for the case to be dismissed and asks the Court to promptly deny this motion. In support of this motion, Plaintiff avers as follows:

1. Newly retained counsel for the Plaintiff has discussed the contents of this motion with counsel for the Defendants and has been advised that the Defendants oppose this motion.

2. Rule 41(a)(2) of the Federal Rules of Civil Procedure provides, in substance, that an action can be dismissed at the Plaintiff's instance where the Defendant has filed an answer, but only upon order of the Court and upon such terms and conditions as the Court deems proper. The rule further provides that such a dismissal is without prejudice, unless

the order specifies otherwise.

3. Plaintiff's newly retained counsel desires to dismiss this action, but only if the Court will dismiss this action without prejudice and by October 8, 2007. Otherwise, Plaintiff desires to continue the present action.

Dated this 3rd day of October, 2007.

/s/Gerald L. Miller
GERALD L. MILLER (MIL039)
Attorney for Plaintiff
Andriette Rowell

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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/s/Gerald L. Miller
Of Counsel